IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.MC.No. 591 of 2007()

ST.361/2006 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD
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PETITIONER: COMPLAINANT

P.S.MANOJ, VRUNDAVANAM,
VETTITHITTA P.O., PIRAVANTHUR VILLAGE,
PUNALOOR, KOLLAM DISTRICT.

BY ADV. SRI.RAJESH THOMAS
SRI.K.P.SHAHUL HAMEED

RESPONDENTS: ACCUSED 1 & 2
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1. PADMA DEVI C.S.,
CHAVARKODU- PADMA VILASAM,
PARIPPALLY P.O., KOLLAM DISTRICT.

2. M/S BRAVE PHARAMA,
R.P.A.M.COMPANY, PUNNAKKANNUR,
PERUMPUZHA P.O., KUNDARA, ILLAMBALLUR VILLAGE,
KOLLAM TALUK, KOLLAMD DISTRICT.

3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 591 Of 2007

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Dated this the 26th day of September, 2007

ORDER

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instrument Act. The complaint was filed before the Judicial First Class Magistrate Court- I, Harippad. Cognizance was taken. The accused entered appearance. Without any demur against the jurisdiction of the Magistrate, the trial proceeded. When the matter reached at the stage of 313 examination, without any objection from any side, the learned Magistrate felt that the court had no jurisdiction to proceed with the trial in the light of the decisions in **Hariharaputra Sharma** v.**State of Kerala and another** [2006(3) K.L.J 875]. The learned Magistrate without any request from any one, directed the return of the complaint to the complainant.

2. The learned counsel for the petitioner submits that the learned Magistrate was not justified in returning the complaint without any objection from any side. It is prayed that directions under Section 482 may be issued to the learned Magistrate to continue with and complete the trial and dispose of the same in accordance with law.

3. The learned counsel for the petitioner heavily relies on the observations in **Itty Mathew v. Ramani** (1998 (1) KLT 851) and

submits that in this case also there is no contention even that any failure of justice results on account of the trial already initiated being completed before the learned Magistrate.

4. Notice was issued to the respondent- accused. The respondent- accused have also not chosen to appear before the court and support the impugned order. I must in these circumstances assume that the respondent do also not have any objection in the trial continuing before the the Judicial First Class Magistrate Court- I, Harippad. It is not the case that there is want of jurisdiction to deal with the subject matter. It is only a doubt expressed by the Magistrate on the territorial jurisdiction of the learned Magistrate to conduct the trial. The trial has reached at the stage of 313 examination. I am, in these circumstances, satisfied that the learned Magistrate can be directed to complete the trial and pronounce the judgment invoking powers under Section 482 Cr.P.C.

5. This Crl.M.C is accordingly allowed. The learned Magistrate shall dispose of S.T.No.361/2006 on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj